FILE COPY

FILED
FEB 27 1946

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 288

SID W. RICHARDSON, ET. AL.,
Petitioners,

vs.

KEITH KELLY, RECEIVER

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TEXAS

MOTION TO RETAX COSTS

JOHN M. SCOTT,
Counsel for Petitioner.

SAM DARDEN,
SAM R. MERRILL,
MILBURN E. NUTT,
WILLIAM M. BROWN,
Of Counsel.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 288

SID W. RICHARDSON, ET. AL.,

Petitioners.

vs.

KEITH KELLY, RECEIVER,

Respondent

MOTION TO RETAX COSTS

To the Honorable, the Supreme Court of the United States:

Now come Sid W. Richardson, et al., Petitioners in the above styled and numbered cause and file this their motion to retax the costs in the above captioned case in which petition for writ of certiorari to the Supreme Court of Texas has been refused and as grounds for such motion would respectfully show:

That at the time the certified transcript of the record was forwarded to the Clerk of this Court and prior to the time said record had been printed, these Petitioners entered into a stipulation and agreement with the Respondent in said cause concerning the portions of the transcript which were to be printed.

Petitioners, in preparing their petition for writ of certiorari, confined themselves solely to the federal question involved, to-wit, the question arising under the due process clause of the Fourteenth Amendment to the Constitution of the United States and requested to be printed only that portion of the record relevant to the federal question, omitting all portions of the record pertaining to the question of meritorious defense, believing that question to be

one over which this Honorable Court had no jurisdiction to pass.

The Respondent requested that additional portions of the transcript be included in the printed record as per the stipulation entered into between Petitioners and Respondent attached to this motion.

Petitioners now respectfully request the Clerk of this Court to retax the costs incurred in this cause and require the Respondent to pay that portion of the costs incurred by reason of the additional printed matter.

WHEREFORE, premises considered, Petitioners pray that under the provisions of Rule 38(8) of the Supreme Court of the United States, this Honorable Court make an appropriate order requiring Respondent to pay the costs of printing those portions of the record unnecessary for the consideration of this Court as reflected by the attached stipulation.

Respectfully submitted,

JOHN M. SCOTT,
1605 Fair Building,
Fort Worth, Texas,
Attorney for Petitioners;
SAM DARDEN,
Liberty Building,
Waco, Texas;
SAM R. MERRILL,
Bankers Mortgage Bldg.,
Houston, Texas;
MILBURN E. NUTT,
Staley Building,
Wichita Falls, Texas;
WILLIAM M. BROWN,
1605 Fair Building,
Fort Worth, Texas,
Of Counsel.

THE STATE OF TEXAS,
County of Tarrant:

Before Me, the undersigned authority, a Notary Public in and for Tarrant County, Texas, on this day personally appeared John M. Scott, attorney for Petitioners in the above captioned cause, who after being duly sworn stated that the matters set forth in the foregoing motion are true and correct.

EDNA COOK,
[SEAL.] *Notary Public in and for Tarrant County, Texas.*

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 288

SID W. RICHARDSON, ET AL.,

Petitioners,

vs.

KEITH KELLY, RECEIVER,

Respondent

It is stipulated and agreed by the interested parties, Petitioners and Respondent, that the attached list of matters which have been included in the printed record, have been included at the instance and request of the Respondent; that such matters were omitted from the designation prepared by Petitioners herein because such matters were not deemed pertinent nor relevant to the Federal questions involved, and that, notwithstanding the stipulation of matters to be included in the printed record which has been filed with the Clerk of the Supreme Court of the United States, Petitioners here reserve the right, and shall be allowed to urge that the costs of printing the additional matter shall be taxed against the Respondent.

Dated this the 6th day of May, A. D. 1946.

SLEEPER, BOYNTON, DARDEN & BURLESON,
MILBURN E. NUTT,
SAMUELS, BROWN, HERMAN & SCOTT,
MERRILL & SCOTT,
By JOHN M. SCOTT,
Attorneys for Petitioners;
MARION B. SOLOMAN,
Attorney for Respondent.

In addition to the matters requested to be printed by petitioners, the following items have been included in the stipulation at the request of the respondent:

I

Matters Appearing in Statement of Facts

1. Page 3.
2. Page 9 through 13.
3. Page 14, omitting conversation between attorneys.
4. The introduction of Exhibits 23 and 24 on page 16 should be printed.
5. Page 18 through 50.
6. Page 170 through 173, and first paragraph 174.
7. That portion of the deposition of Oran Speer appearing on first behalf of page 276.
8. Page 290 through 297.
9. Page 327 and 328, the first six interrogatories and answers of K. C. Gray.
10. Pages 337 and 338, interrogatories 35 and 36, and answers thereto.
11. Pages 343 through 346.
12. Pages 347 through 349.
13. Page 350, omitting argument and objection of counsel.
14. Pages 351 through 356.
15. Pages 357 through 371, omitting argument and objections of counsel.
16. Pages 491 through 493.
17. Pages 494 through 500.
18. Pages 503 through 518.
19. Pages 528 through 530, omitting argument and objections of counsel.
20. Pages 530 through 562.
21. Pages 563 through 566, omitting argument and objection of counsel.

22. Pages 567 through 600.

23. Pages 601 through 674.

24. Pages 678 through 717, and testimony of Herbert Marshall.

II

Exhibits

1. Plaintiffs' Exhibits 9 through 24, being pleadings in cause No. 63621.

2. Plaintiffs' Exhibits 29 through 38, being pleadings in cause No. 63621.

3. Defendants' Exhibits 2 and 3, being correspondence with Rogers and release.

4. Defendants' Exhibits 12 through 18, being applications to transact business, and certified copies of portions of annual statements.

5. Defendants' exhibits 32 through 36, consisting of permits to transact business.

6. Defendants' Exhibit 124.

7. Defendants' Exhibit 125.

8. Defendants' Exhibits 39, 40, 43 and 44.

9. Defendants' Exhibits 45 and 46.

10. Defendants' Exhibits 58 and 59.